

any person or persons on my behalf in respect of the said accident.

It is understood and agreed that the payment herein is made without admission of liability."

It is also not disputed that the insurance company paid to the solicitors of the third defendant \$350 costs.

It is perfectly clear that the third defendant has settled his claim in Suit No. 65 of 1966 and has accepted the sum of \$5,000 from the insurance company in full and final settlement of his claim against the plaintiff. Those being the facts the question now is how they affect the counterclaim of the third defendant in this suit. I am of the view that by that transaction between the third defendant and the insurance company the claim of the third defendant against the plaintiff was absolutely extinguished. (See the case of *Hirachand Punamchand v. Temple*.⁽¹⁾) Therefore the third defendant cannot maintain his counterclaim.

In the result there must be judgment for the plaintiff. Damages have been agreed at \$4,000. There will be judgment for the plaintiff in the sum of \$4,000 and costs against the first and third defendants and the counterclaim of the third defendant is dismissed with costs.

Judgment for the plaintiff.

Counterclaim dismissed.

Solicitors: *Murphy & Dunbar.*

FATIMAH v. MOIDEEN KUTTY

[O.C.J. (Ali J.) June 25, 1967]

[Muar — Civil Appeal No. 5 of 1966]

Land — Temporary occupation licence — Legal incidence resulting from death of T.O.L. holder with regard to arrears of rent accrued due before death and arrears accruing after death — Whether legal representative has right to distrain in respect of arrears of rent.

The appellant as administratrix of the estate of a deceased, applied to a magistrate for a warrant of distress for eight months rent alleged as owing by a tenant of the deceased in respect of temporary structures built on State land held under Temporary Occupation Licence No. 284 A/60 issued to the deceased. The appellant maintained as widow and administratrix she had the right to distrain for non-payment of rent.

The respondent paid the rent of \$320 plus costs to the bailiff as claimed under protest, to avoid seizure, and issued a notice of objection contesting the issue on various grounds. At the hearing of the objection and arguments of counsel, the magistrate in effect discharge the warrant of distress. On appeal,

Held: the temporary occupation licence terminated with the death of holder and whatever rights the deceased had over the land they did not pass on his intestacy. Accordingly the appellant, as representative, did not at the material time have any right to distrain the respondent's property.

A Cases referred to:—

(1) *Tay Cheo v. Chow Ngia* [1967] 1 M.L.J. 281.

(2) *Papoo v. Veeriah* [1965] 1 M.L.J. 127.

(3) *Govindaraju v. Krishnan* [1962] M.L.J. 334.

(4) *Hee Cheng v. Krishnan* [1955] M.L.J. 103.

MAGISTRATE'S CIVIL APPEAL.

B

D. A. Devadason for the appellant.

W. H. Sault for the respondent.

Cur. Adv. Vult.

Ali J.: The appellant as administratrix of the estate and effects of P. Kunjahamad, deceased, applied to the magistrate, Batu Pahat, for a warrant of distress under section 5(1) of the Distress Ordinance No. 28 of 1951. The application, which was made *ex parte*, was approved by the magistrate, Inche Abdul Rahman, on the 21st March, 1965. The appellant's claim was for the sum of \$320 being arrears of rent for 8 months in respect of premises Nos. 16 and 17, Jalan Ismail, Senggarang, Batu Pahat.

On the 24th March, 1965, the bailiff of the court went to the premises to execute the warrant. But on the respondent paying the sum of \$320 plus a further sum of \$22 as costs the bailiff did not execute the warrant. The respondent paid this amount under protest indicating that he would object to the distress. The money was consequently deposited in court to abide the result of the respondent's objection. By a notice of objection dated 29th May, 1965, the respondent called upon the appellant to release the money from deposit within 3 days after service. In support of this objection the respondent filed an affidavit in which he claimed ownership to the premises in question. He stated that the premises were built by the deceased, P. Kunjahamad, and that he occupied them as a tenant paying a monthly rent of \$40 to the deceased. He further stated that the premises were built on State land in respect of which temporary occupation licence No. 284A/60 was issued to the deceased, P. Kunjahamad, as holder. His claim to ownership was founded on the fact that he had carried out extensive repairs on the premises which cost him \$2,425.35. He added that he had been prosecuted, convicted and fined \$30 in the magistrate's court, Batu Pahat, on 7th January, 1964, for reconstructing the houses. It was, however, not apparent from his affidavit what his real contention in law was. The appellant, on the other hand, also filed an affidavit in which she maintained that as the two premises in question formed part of the estate of the deceased, P. Kunjahamad, she, as his widow and administratrix, was entitled to distrain the respondent's property for non-payment of rent. She, however, admitted that the two houses were built on State land held under T.O.L. No. 284A/60 issued to the deceased.

The respondent's objection came up for hearing before another magistrate, Inche Yusof, on 7th March, 1966. After hearing arguments and considering the evidence of both parties the learned magistrate made an order in these terms:—

"Application for distress dismissed. Money deposited by objector to be paid out."

As the warrant of distress had in fact been issued by Inche Abdul Rahman the order that should have been made was that the warrant be discharged. This would have been in accordance with the provisions of section 16 of the Distress Ordinance. However as both parties were represented by counsel who, I assume, understand the effect of Inche Yusof's decision, I shall for the purposes of this appeal treat the decision as one which has the effect of discharging the warrant of distress.

At the hearing of the objection, counsel for the respondent raised the preliminary point that inasmuch as the appellant had not produced the letters of administration at the time when she applied for the warrant of distress she had no authority to distrain the respondent's property. This point did not appear to have been considered by the trial magistrate and it was not pursued at the hearing of this appeal. In the event I do not consider it necessary to decide on it. But another point of substance raised by the respondent was that inasmuch as the land on which the two houses were built was State land the appellant, as representative, had absolutely no right to receive rent for the occupation of the premises. It follows from there that at the time of applying for warrant of distress the two houses in question did not form part of the estate of P. Kunjahamad as they did not pass on his intestacy. Counsel for the respondent appeared to have argued that even if the evidence disclosed some sort of arrangement between the parties such an arrangement was illegal and of no effect. On behalf of the appellant, however, it was argued to the effect that inasmuch as the evidence had disclosed an admission by the respondent that he was the tenant of the appellant he was estopped by reason of section 116 of the Evidence Ordinance from disputing the appellant's title. The same arguments were addressed to me at the hearing of this appeal. The question of estoppel hardly seemed to have arisen for in the court below the respondent virtually abandoned his claim to ownership of the premises. In this context the judgment of the Federal Court in *Tay Cheo v. Chow Ngia* ⁽¹⁾ could not be relied upon by the appellant. At any rate in that appeal the Federal Court was not asked to consider the true effect of a temporary occupation licence. All that had arisen there was a dispute by the tenant as to title. The point for consideration in the present appeal, however, is whether the appellant, as

A administratrix, had the right to apply for warrant of distress to recover arrears of rent in respect of the occupation of houses built on State land. It is I think generally accepted by now that a temporary occupation licence conferred on the holder merely rights of occupation. As was stated by Good J. in *Papoo v. Veeriah*, ⁽²⁾
B "The licence is personal to the holder; it dies with the holder." In that case his Lordship went so far as to say:—

"It is not part of the estate at all; and it cannot pass on intestacy and it cannot be transmitted by the will of a testator."

C Now if this is the true construction of the Land Rule which declares that a temporary occupation licence is not transferable, the appellant must obviously fail in this appeal for the simple reason that the two premises in question could not on the death of P. Kunjahamad form part of his estate. The question, however, is not altogether free from difficulty for in *Govindaraju v. Krishnan* ⁽³⁾ Ismail Khan J. construing the same Land Rule was of the view that the letting of two rooms in a house built on T.O.L. did not amount to a transfer within the meaning of the rule. It is difficult to say whether his Lordship would have come to a different view if the judgment of Thomson J. (as he then was) in *Hee Cheng v. Krishnan* ⁽⁴⁾ had been cited. In *Hee Cheng's* case Thomson J. held that the contract for the purchase of a house built on a piece of land in respect of which a T.O.L. was issued was in principle and in fact an attempt to sell and to purchase the licensee's rights under the licence. It was ruled there that the contract being for an unlawful consideration within the meaning of section 24 of the Contracts (Malay States) Ordinance, 1950, was void. In *Papoo v. Veeriah*, *supra*, Good J. cited Thomson J.'s decision with approval saying, *inter alia*:—

G "The public, however, apparently continue to treat land held under temporary occupation licence as if such a licence was capable of transferring some kind of title to the holder and as if it conferred upon the holder a right to deal in land, or in things attached to the land, which comes to the same thing, as if it was land in the ownership of the licence holder. . . .

A temporary occupation licence is exactly what the name implies. It is a licence to occupy and nothing more."

H Clearly to my mind the decision of Ismail Khan J. in *Govindaraju's* case, *supra*, which was concerned with a form of dealing in rights of occupation conferred by a T.O.L., i.e. the letting of two rooms of a house built on a State land, the decision of Thomson J. in *Hee Cheng's* case which was also concerned with another form of dealing in rights of occupation conferred by a T.O.L., i.e. contract to sell and purchase a house built on State land and the words of Good J. in *Papoo's* case as quoted earlier, all seemed to suggest the need for a final determination on the true meaning of the word "transfer" as it is used in the Land Rule. Indeed, in *Hee Cheng's* case

Thomson J. did express the hope that the matter being of such importance be taken further. This is what his Lordship said:—

"Such is my opinion as to the question of law that arises in the case. I may be right and I may be wrong. As the matter is of some importance, I can only express a hope that it may be taken further."

In the present appeal the difficulty already referred to does not really arise for it is abundantly clear that at the time the appellant applied for the warrant of distress the land on which the two premises stand was State land, good and proper, and that whatever rights the deceased, P. Kunjahamad, had over the land had died with him and did not pass on his intestacy. Accordingly it must be held that the appellant, as representative, did not at the material time have any right to distrain the respondent's property for non-payment of rent. The magistrate's decision is therefore upheld and this appeal is dismissed with costs.

Appeal dismissed.

Solicitors: D. A. Devadason; Sault, Keith Sellar & Co.

Re application of LOWER PERAK MOTOR SERVICE CO. LTD.

[O.C.J. (Raja Azlan Shah J.) June 26, 1967]

[K.L. — Originating Motion No. 8 of 1967]

Industrial Law — Trade dispute — Statutory time limit for reference to tribunal by Minister — Definition of "trade dispute" in Essential (Trade Disputes in the Essential Services) Regulations, 1965 — Factors which give representative status to union — Recognition of union as trade union — Whether this is a specified subject matter of a trade dispute under the Regulations.

This was an application by motion for leave to be granted for an order of prohibition to issue to the Industrial Arbitration Tribunal, prohibiting adjudication upon a dispute between the company applicant, and the Transport Workers' Union Federation of Malaya, the respondents, the Minister of Labour being represented by the federal counsel.

The dispute was whether the company should recognise the Transport Workers' Union as distinct from the question of its representative capacity as the bargaining agent for the workmen employed by the company.

Upon the company's continued reluctance to accept the union's claim for recognition the union on November 24, 1966 reported to the Minister of Labour that there existed a trade dispute between the company and its workmen whom the union claimed it represented.

By March 16, 1967 the company was still unyielding and adamant on its stand. The secretary to the Ministry of Labour informed the company that the Minister had with effect from March 16, 1967 accepted the report of the union dated November 24, 1966 under regulation 4(4) of the Essential (Trade Disputes in the Essential Services) Regulations, 1965. that there existed a trade dispute and on April 8, 1967 referred the dispute to Industrial Arbitration Tribunal.

The hearing before the tribunal fixed on May 5,

A 1967 was adjourned *sine die* because of the present application.

The validity of the hearing was attacked on two grounds: (a) it was said that no trade dispute existed as defined under the Trade Union Ordinance 1959 or the Essential (Trade Disputes in the Essential Services) Regulations, 1965; (b) the reference by the Minister, if it was valid at all, was made only after the time prescribed by regulation 7 of the Essential (Trade Disputes in the Essential Services) Regulations, 1965 had expired under the notification by the Secretary to the Ministry of Labour. This was outside the prescribed period of twenty one days.

B With regard to (b) the notification of the failure to reach a settlement was made on April 8, 1967. It was said that the requirement of regulation 7 had been violated as the notification ought to have been made within twenty one days of the report. A contrary view taken by the respondent was that the Minister must be deemed to have postponed such notification, which he did, as long as such postponement did not exceed seven days.

C With regard to (a), it was contended that the employer-union dispute was not a dispute between the specified parties of a trade dispute and that the union recognition was not "connected with" the specified subjectmatter of a trade dispute.

D Held: (1) trade unions and employers' association have no *locus standi* unless they represent workmen and employers who are actual parties to a trade dispute. In this case the union acted for its members and in consequence the dispute is one between "employers and workmen";

E (2) on the question as to whether "union" recognition" is "connected with" the specified subjectmatter of a trade dispute, there was here a trade dispute within the meaning of the regulations, in consequence the jurisdiction of the tribunal was established;

F (3) when the company did not see fit to recognise the union as being representative of its members, a trade dispute came into existence. Since the dispute was referred to the Minister by a trade union representing the workmen members, that fact gave power to the Minister to refer it to the tribunal which therefore has jurisdiction to hear the dispute;

G (4) for the purpose of the Regulations, the dispute was reported to the Minister when he formally accepted it on March 16, 1967 i.e. after he had acquainted himself with the company's stand in the dispute. His decision in that matter was final and conclusive;

(5) it must be assumed that the Minister had exercised his discretion in postponing the notification in the light of the special circumstances of the case.

Cases referred to:—

- (1) *Larkin v. Long* [1915] A.C. 814, 832.
- H (2) *National Association of Local Government Officers v. Bolton Corporation* [1934] A.C. 166, 189.
- (3) *R. v. National Arbitration Tribunal; Ex parte Keable Press Ltd.* [1943] 2 All E.R. 633, 634, 636.
- (4) *Beetham v. Trinidad Cement Ltd.* [1960] A.C. 132, 133, 144.
- I (5) *Stratford & Son Ltd. v. Lindley* [1965] A.C. 269, 281, 334.

ORIGINATING MOTION.

N. Sharma for the applicant.

Au Ah Wah (Senior Federal Counsel) for the first respondent.